Supreme Court, U.S.
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No. 96-1753

In The

Supreme Court of the United States

October Term, 1996

COUNTY OF NAPA,

Petitioner,

v.

VIOLET M. SCHUTT,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Violet Schutt opposes the granting of certiorari to review the decisions reversing summary judgment and denying rehearing of the United States Court of Appeals for the Ninth Circuit in this case.

JURISDICTION

The case before this court on petition for writ of certiorari fails to meet the standards set forth in Rule 10 (a) and (c) and Rule 11 of the Rules of this court. The summary judgment in this matter was granted despite substantial issues of fact. The judgment was appropriately reversed and remanded for trial of the factual issues.

THE CASE BELOW

Violet Schutt was a correctional officer in the Napa County Jail. She was hired in June of 1991 and terminated on March 31, 1993. She filed the district court action pursuant to Title VII of the United States Civil Rights Act of 1964, as amended, Title 42 United States Code Section 2000e et seq., to obtain relief for discrimination in employment following issuance of "right to sue" letters by the California Department of Fair Employment and Housing and the U. S. Equal Opportunity Commission. Schutt alleged that she was denied promotion, subjected to a hostile working environment and terminated on account of her sex, race and marital status. The district

court granted Napa County's Motion for Summary Judgment on August 15, 1995. Schutt appealed that summary judgment and the Court of Appeals for the Ninth Circuit reversed and remanded the action due to its determination that the district court had failed to allow trial of genuine issues of material fact.

THE MATERIAL FACTS

Violet Schutt was a correctional officer in the Napa County Jail. She was hired in June of 1991 and worked full time (albeit nominally "extra hire," and probationary "part-time") until she was terminated on March 31, 1992. In her first formal evaluation on July 10, 1992, she received a positive evaluation. Then in late July or early August co-workers on the team to which she was assigned learned that she was intimately involved with a black co-worker on a different team. Deposition testimony was presented to the district court in opposition to the motion for summary judgment that Schutt's life at work became miserable. She was shunned by a clique of the co-workers on the team who "kept book" on her activities and set out to get her fired. She was the subject of "pranks" and wild goose chase assignments. She was posted to the least desirable assignments and not posted to or trained in the assignment she ostensibly needed to complete her probation. Her life and that of a black co-worker were put in jeopardy by the failure of the clique to answer her radio calls or respond to a call for assistance.

Supervision of the team during this period was chaotic at best. Schutt appealed to her supervisor (Dalpiaz) (who had been off on sick leave for much of the time) for help. He would not meet with her. She then went to the director of the Napa County Department of Corrections, John Pearson, and gave him memos regarding the mistreatment, in particular disclosure of personal information and the failure to respond to her radio calls. She met with him and detailed the situation and indicated that she felt that her mistreatment had as its source her mixed race relationship. She indicated that the team members who were harassing her included two of the acting supervisors during the Supervising Correctional Officer's absence.

Pearson assigned a different Correctional Officer III (Alexander) to supervise the team and to "investigate" Correctional Officer Schutt's treatment, directing him " . . . to look into whether there were any signs that there were any issues related to Schutt's relationship with Ron Perkins, with Mr. Perkins being black, as to whether or not that was a factor or other racial-related issues that were going on." Despite his awareness of the racial nature of Schutt's complaint Pearson never contacted the Equal Opportunity Officer for Napa County, Judith Ponterella, or asked her to investigate.

Alexander produced a report summarizing his interviews with Schutt and other team members. One supervisor, Laurian Luis, verified the harassment of Schutt by the clique. The principal results of the investigation were that management transferred Schutt to a different team and upper management began a course of acts and omissions which removed Schutt from the offensive team but

essentially branded her as the problem. In response to her complaint, the managers of the Napa County Department of Corrections generated a negative evaluation, transferred her to another team and extended her probationary status on pretexts. Napa management failed to follow its own personnel rules, basic fairness and good faith by suppressing the next evaluation of her direct supervisor which was positive and recommended permanent status. Ultimately management transferred her to the least experienced supervisor and terminated her employment on a blatantly fabricated pretext.

THE COURT OF APPEAL DECISION WAS APPROPRIATE DUE TO THE GENUINE ISSUES OF MATERIAL FACT PRESENTED BY PLAINTIFF.

The Court of Appeals reviewed the summary judgment *de novo, Darring v. Kincheloe,* 783 F.2d 874, 876 (9th Cir. 1986) using the same standard as that used by a trial court under Fed. R. Civ. P. 6(c) (*Darring,* 783 F.2d at 876). Viewing the evidence in the light most favorable to the non-moving party, the court determined that there are genuine issues of material fact and determined that the district court applied the relevant substantive law correctly. *Ashton v. Cory,* 780 F.2d 816, 818 (9th Cir. 1986). The issues pertinent to the case which Petitioner seeks to present are not addressed in the Ninth Circuit decision. This case is essentially a case of the court of appeals reversing the district court judge's factual analysis.

THIS CASE IS NOT APPROPRIATE FOR SUPREME COURT REVIEW.

This case does not present issues that merit United States Supreme Court attention. The purported conflicts between circuits in the interpretation of *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993), hereinafter referred to as "*St. Mary's*" and the application of the *McDonnell Douglas-Burdine* standard (*McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973); *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 67 L.Ed.2d 207, 101 S.Ct. 1089 (1981)" are only presented in this case by Petitioner's fragmentation and distortion of the facts and the Ninth Circuit decision.

The case presently before the district court presents genuine issues of material fact regarding both pretext and racial animus which require jury trial. The district court erred in granting summary judgment. The standard applied by the Ninth Circuit was appropriate for this factually intensive case. The "pretext" versus "pretext plus" analysis offers little to alter the Ninth Circuit's analysis. The evidence was not simply that of protected status, differential treatment and the employer's pretexts for that treatment. There was ample evidence that could meet *any* court's standard of evidence of discriminatory intent. It is only by fragmenting the sequence of events (which transpired over a nine month period) and separating the employer's multiple supervisors into individual actors that petitioner can argue that the "plus" of discriminatory animus is missing.

THE COURT OF APPEALS DID NOT ERR IN ITS DECISION.

The issues which Petitioner presently argues were discussed by the Court of Appeals in its review of the District Court opinion but without the pretext/pretext-plus analysis desired by Petitioner:

> On the claim of discrimination based on disparate treatment, the district court found that Schutt had established a prima facie case. Napa limits its argument on appeal to the issue of pretext, and for the purpose of this appeal does not challenge the finding of a prima facie case of discrimination.
>
> * * *
>
> The district court found that Schutt had failed to present evidence as to "why these legitimate reasons were pretextual and only served to mask underlying discriminatory intent." Dist. Ct. Op. at 19. However, the court first was required to decide the question of whether the reasons were pretextual. Instead, the court moved immediately to the question of whether Schutt came forward with specific evidence that Napa was motivated by racial animus and concluded that she did not.
>
> This is more that a semantic nicety, because the question of motivation may only be decided by the factfinder after the question of pretext has been resolved. . . .

The Court of Appeals did not discuss the evidence submitted by Schutt in opposition to the summary judgment supporting the existence of racial animus. Review of that evidence would reveal that the district court judge

had also usurped a jury issue in that Schutt had presented substantial evidence of the relationship between her inter-racial relationship and her mistreatment by her employer.

The summary judgment and judgment notwithstanding verdict cases in the circuits which counsel for Petitioner has called the "pretext-plus" circuits fail to reveal a standard which was not met by Schutt's evidence in opposition to the summary judgment. Similarly the evidence met the standard articulated by the Ninth Circuit in *Nidds v. Schindler Elevator Corp.*, 103 F.3d 854 (1996) relied on by Petitioner as a conflicting opinion within the Ninth Circuit. In *Nidds* the court stated: "On summary judgment, of course, Nidds' burden is only to produce enough evidence that would allow a reasonable factfinder to conclude that the true reason for his discharge was a discriminatory one" (103 F.3d 854 at 859). Schutt met this burden with substantial evidence of racially motivated mistreatment, testimony that she had been called a "nigger lover," a management "investigation" which noted racial problems as a cause of her mistreatment on her "team" in addition to that fact that Napa management's explanations were false.

In *Goldman v. First National Bank of Boston*, 985 F.2d 1113 (1993), a case cited by Petitioner as presenting a conflict with the Ninth Circuit, the court stated:

> Evidence of age animus "need not be of the 'smoking gun' variety," but the totality of the circumstances must permit a reasonable inference that the employer's justification for the challenged action was a pretext for a discrimination 985 F.2d 1119 (citations omitted).

By ignoring the totality of the circumstances, Petitioner seeks to avoid scrutiny of its course of conduct by a jury.

Schutt has now been provided an opportunity to litigate her claims in this matter. By fragmenting the termination claim of plaintiff and failing to review it in the context of the preceding months of harassment and adverse personnel actions, the district court trivialized Schutt's consistent effort to establish herself in a job through which she could support her family. The Court of Appeals decision in this matter was appropriate. The case should proceed to trial.

Respectfully submitted,

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